

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

MICHAEL D. ROSE and)
EDWARD L. HARMON, on their own)
behalf and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

Civil Action No. 5:22-cv-00405
(Judge Volk)

BETSY JIVIDEN, individually as an)
employee of the West Virginia Division of)
Corrections and Rehabilitation,)
MICHAEL FRANCIS, individually as an)
employee of the West Virginia Division of)
Corrections and Rehabilitation,)
LARRY WARDEN, individually as an)
employee of the West Virginia Division of)
Corrections and Rehabilitation,)
BRAD DOUGLAS, individually and in)
his official capacity as the acting)
Commissioner of the West Virginia)
Division of Corrections and)
Rehabilitation,)
JEFF S. SANDY, individually and in his)
official capacity as the Cabinet Secretary)
of the West Virginia Department of)
Homeland Security,)
The RALEIGH COUNTY)
COMMISSION,)
JOHN/JANE DOE EMPLOYEES OF)
THE RALEIGH COUNTY)
COMMISSION,)
The FAYETTE COUNTY)
COMMISSION,)
JOHN/JANE DOE EMPLOYEES OF)
THE FAYETTE COUNTY)
COMMISSION,)
The GREENBRIER COUNTY)
COMMISSION,)
JOHN/JANE DOE EMPLOYEES OF)
THE GREENBRIER COUNTY)
COMMISSION,)

The MERCER COUNTY)
COMMISSION,)
JOHN/JANE DOE EMPLOYEES OF)
THE MERCER COUNTY)
COMMISSION,)
The MONROE COUNTY)
COMMISSION,)
JOHN/JANE DOE EMPLOYEES OF)
THE MONROE COUNTY)
COMMISSION,)
The SUMMERS COUNTY)
COMMISSION,)
JOHN/JANE DOE EMPLOYEES OF)
THE SUMMERS COUNTY)
COMMISSION,)
The WYOMING COUNTY)
COMMISSION,)
JOHN/JANE DOE EMPLOYEES OF)
THE WYOMING COUNTY)
COMMISSION,)
PRIMECARE MEDICAL OF WEST)
VIRGINIA, INC.,)
JOHN/JANE DOE PRIMECARE)
EMPLOYEES,)
WEXFORD HEALTH SOURCES, INC.,)
JOHN/JANE DOE WEXFORD)
EMPLOYEES,)
JOHN/JANE DOE CORRECTIONAL)
OFFICERS,)
)
Defendants.)
)
)
)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO
AMEND COMPLAINT

COME NOW, Plaintiffs, by the undersigned counsel, and in further support of their
Motion For Leave to Amend The Complaint, state as follows:

BACKGROUND

This is a class action suit filed against various current and former employees of the West Virginia Department of Corrections and Rehabilitation and the West Virginia Department of Homeland Security regarding the conditions of confinement and the treatment of inmates at Southern Regional Jail (hereinafter “SRJ”) in Beaver, West Virginia. This class action suit also includes as Defendants contractors who provide (or used to provide) medical services at SRJ and various County Commissions who contract to send their inmates/prisoners to SRJ.

The original Class Action Complaint was filed on September 22, 2002 [ECF No. 1]. On October 7, 2022, Plaintiffs filed their Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) [ECF No. 7]. Since that time, all Defendants named in the Amended Complaint have waived service of process. To date, no Defendant has filed an Answers or 12(b)(6) Motion.

ARGUMENT AND CITATION OF AUTHORITY

Fed. R. Civ. P. 15(a)(2) provides:

In all other cases [where Rule 15(a)(1) does not apply], a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.

See also Duffield v. Memorial Hospital Assoc., 361 F. Supp. 398, 400 (S.D. W.Va. 1973) (“[t]he Court is mindful of provisions of Rule 15 manifesting liberality in allowing amendments to pleadings when justice so requires).

Since the filing of the Amended Complaint, during the course of their ongoing investigation into SRJ, the undersigned counsel for Plaintiffs have uncovered a subclass of current inmates at SRJ who are being discriminated against based on their disabilities and being denied reasonable accommodation due to their disabilities. As such, Plaintiffs request leave to amend the

Amended Complaint to add a cause of action for violation of the American With Disabilities Act (“ADA”) and to add a new subclass representative Plaintiff in order to bring said ADA claims.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their Motion and give leave to amend the Amended Complaint.

**MICHAEL D. ROSE and EDWARD L. HARMON, on their own behalf and on behalf of all those similarly situated,
By Counsel**

/s/ Russell A. Williams

Stephen P. New (WVSB No. 7756)
Russell A. Williams (WVSB No. 12710)
New, Taylor & Associates
430 Harper Park Drive
Beckley, West Virginia 25801
Ph: (304) 250-6017
Fax: (304) 250-6012
steve@newtaylorlaw.com
russell@newtaylorlaw.com

Timothy Lupardus (WVSB No. 6252)
The Lupardus Law Office
275 Bearhole Road
Pineville, West Virginia 24874
(304) 732-0250
office@luparduslaw.com

Zachary Whitten (WVSB No. 13709)
The Whitten Law Office
P.O. Box 753
Pineville, West Virginia 24874
zwhittenlaw@gmail.com

Robert Dunlap (WVSB No. 10012)
Robert Dunlap & Associates
208 Main Street
Beckley, West Virginia 25801
(304) 255-4762
robertdunlapesq@gmail.com

CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff hereby certifies that a true and correct copy of the foregoing *MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE COMPLAINT* was filed with the clerk on November 18, 2022 via the Court's CM-ECF Filing System which will provide electronic notification to all counsel of record.

/s/ Russell A. Williams

Russell A. Williams (WVSB No. 12710)

New, Taylor & Associates

430 Harper Park Drive

Beckley, West Virginia 25801

Ph: (304) 250-6017

Fax: (304) 250-6012

russell@newtaylorlaw.com